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RICHARD W. STEVENS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NC

CV 12 3174

AMERICAN SMALL BUSINESS LEAGUE

CASE NO.

Plaintiff,

COMPLAINT FOR INJUNCTIVE
RELIEF

v.

UNITED STATES AIR FORCE
Defendant.

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of documents improperly withheld from Plaintiff by the United States Air Force.

JURISDICTION AND VENUE

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

THE PARTIES

3. Plaintiff American Small Business League ("ASBL") is an organization incorporated in California which has its principal place of business in Sonoma County, California. ASBL is a national organization established to research and focus public attention on emerging small business issues and to otherwise promote the interests of small businesses. ASBL's activities include the review of evolving federal and state government policy and procedures to determine possible impacts on small businesses.

4. Defendant United States Air Force (hereinafter "USAF") is an "agency" within the meaning of 5 U.S.C. § 552 (f).

PLAINTIFF'S FOIA REQUEST AND USAF'S RESPONSE

5. On or about April 23, 2010 pursuant to the Freedom of Information Act ("FOIA"), ASBL requested records from USAF consisting of:

The Individual Subcontracting Report (ISR/SF 2940 for the contract with PID FA880709C0002, to Rockwell Collins Inc., DUNS 0606058835883

A copy of ASBL's FOIA request is attached as Exhibit A.

6. USAF did not respond to the request in the time required by law. On May 28, 2010, ASBL appealed USAF's constructive denial of its FOIA request. A copy of ASBL's appeal is attached as Exhibit B. Due to the lack of any response from USAF, ASBL contacted USAF's Freedom of Information Office by email and telephone and was informed that USAF had mistakenly closed its file concerning ASBL's FOIA request. At the suggestion of USAF, ASBL resubmitted its FOIA request on August 11, 2010. A true and correct copy of ASBL's resubmitted request is attached hereto as Exhibit C. USAF acknowledged receipt of the resubmitted request on September 9, 2009, and promised a response by September 22, 2010. No response was received.

7. On October 18, 2010 and again on December 6, 2010, ASBL submitted written appeals to USAF regarding its constructive denial and failure to respond to ASBL's FOIA request. Copies of ASBL's Appeals are attached hereto as Exhibit D.

1 8. USAF did not respond to the Appeals.

2 9. ASBL has a right of access to the documents requested pursuant to 5 U.S.C. §
3 552 (a)(3), and there is no legal basis for USAF's denial of such access. Accordingly, ASBL
4 seeks an order from this court compelling USAF to provide the requested information.

5 **CAUSE OF ACTION**

6 **Violation of the Freedom of Information Act**
7 **Wrongful Withholding of Agency Records**

8 10. USAF has wrongfully withheld documents requested by ASBL.

9 11. ASBL has exhausted the administrative remedies with respect to USAF's
10 wrongful withholding of the requested documents.

11 12. ASBL is entitled to injunctive relief and an order from this Court compelling an
12 immediate release and disclosure of the requested documents.


13 **PRAYER FOR RELIEF**

14 WHEREFORE, ASBL prays that this Court:

- 15 A. Issue an order compelling USAF to disclose all responsive documents in their
16 entirety;
17 B. Provide for expeditious proceedings in this action;
18 C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
19 and
20 D. Grant such other relief as the Court may deem just and proper.

21
22 Dated: June 19, 2012

GUTIERREZ & ASSOCIATES

23
24 By: 
25 ROBERT E. BELSHAW
26 Attorneys for Plaintiff
27
28

American

small
business

League

98% of all U.S. firms have less than 100 employees

April 23, 2010

HAF/IMII
1000 Air Force Pentagon
Washington, DC 20330-1000

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID FA880709C0002, to Rockwell Collins Inc., DUNS 060605883.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I have included a telephone number at which I can be contacted during the hours of 8 a.m. to 5 p.m. Pacific, if necessary to discuss any aspect of my request.

A



Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Baron", with a long, sweeping horizontal line extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

American

small
business

League

98% of all U.S. firms have less than 100 employees

May 28, 2010

HAF/IMII
1000 Air Force Pentagon
Washington, DC 20330-1000

Re: Freedom of Information Act Appeal

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On April 23, 2010, I requested that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID FA880709C0002, to Rockwell Collins Inc., DUNS 060605883.

To date, I have not received a response or the information requested in my request; therefore, I am appealing the request.

Thank you for your consideration of this appeal.

Sincerely,



Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

B

EXHIBIT C

American

small
business

League

98% of all U.S. firms have less than 100 employees

August 11, 2010

HAF/IMII
1000 Air Force Pentagon
Washington, DC 20330-1000

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID FA880709C0002, to Rockwell Collins Inc., DUNS 060605883.

For full disclosure, this request was initially filed on April 23, 2010. I was informed by Mr. Troy Evans on July 15, 2010 that this request had been accidentally closed and he was unable to reopen. So, I am resubmitting this request.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I would prefer all communications to be in writing, either via email at kbaron@asbl.com or by hard copy, if necessary to discuss any aspect of my request.



Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "KB", with a long, sweeping horizontal line extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

11

American



League

98% of all U.S. firms have less than 100 employees

October 18, 2010

HAF/IMII
1000 Air Force Pentagon
Washington, DC 20330-1000

Re: Freedom of Information Act Appeal

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On April 23, 2010, I requested that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID FA880709C0002, to Rockwell Collins Inc., DUNS 060605883.

After a great deal of back and forth with the Air Force regarding this and several other FOIA requests, a response was sent to me via email from Mr. Troy Evans, dated September 9, 2010 and included here. In the email, Mr. Evans informs me that the request had finally been confirmed received by the Air Force on August 23, 2010, regardless of the fact that the original request was filed April 23, 2010. Mr. Evans informed me that a final response to this request would be given by September 22, 2010.

I am appealing this request. To date I have not received a response to this request as Mr. Evans suggested would be given by September 22, 2010, and the statutory time that the Air Force has to respond has now lapsed; therefore I am appealing this request.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Baron". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League

American
**small
business**
League

98% of all U.S. firms have less than 100 employees

December 6, 2010

HAF/IMII
1000 Air Force Pentagon
Washington, DC 20330-1000

Re: Freedom of Information Act Appeal

Re: FOIA No. 2010-06985-F

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On April 23, 2010, I requested that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) and the Summary Subcontracting Report (SSR/SF 295) for the contract with PIID FA880709C0002, to Rockwell Collins Inc., DUNS 060605883.

After a great deal of back and forth with the Air Force regarding this and several other FOIA requests, a response was sent to me via email from Mr. Troy Evans, dated September 9, 2010. In the email, Mr. Evans informs me that the request had finally been confirmed received by the Air Force on August 23, 2010, regardless of the fact that the original request was filed April 23, 2010. Mr. Evans informed me that a final response to this request would be given by September 22, 2010.

An appeal was filed, dated October 18, 2010, due to a lack of response from the Air Force and based on both the statutory response time having been exhausted and the fact that Mr. Evans had alluded to a response being provided by September 22, 2010. To date, no response has been received to this appeal.

I am appealing this request. At this point, due to an adequate lack of response and complete incompetence in the handling of this request by the Air Force, I am informing you that if an appeal denial or the requested documents are not provided within 20 days of the date of this letter, we will be pursuing legal action.



Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin B.", with a long horizontal flourish extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League